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District V  
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## NAVAJO COUNTY BOARD OF SUPERVISORS

Governmental Complex  
P.O. Box 668 - 100 E. Carter Drive  
Holbrook, AZ 86025  
(602) 524-6161 Ext. 406 FAX (602) 524-3094

EDWARD J. KOURY  
County Manager

SHARON R. KEENE-WRIGHT  
Clerk of the Board

### **RESOLUTION NO. 68-93**

#### **RESOLUTION FOR A VARIANCE, USE WAIVER, OF THE NAVAJO COUNTY FLOODPLAIN ORDINANCE**

**WHEREAS**, the Navajo County Board of Supervisors is acting in their capacity as the Floodplain Board of Navajo County; and

**WHEREAS**, the Assessor's Parcel Number 204-11-036 is in the floodplain as shown on the Flood Insurance Rate Map (F.I.R.M.), Panel Number 040066-2375B, dated June 1, 1982; and

**WHEREAS**, a landscaping berm was constructed, as shown in Exhibit A, without a floodplain use permit; and


**WHEREAS**, the owner is aware of the dangers of relying on the landscaping berm for Flood Protection and is willing to hold Navajo County harmless for any damages current or future; and

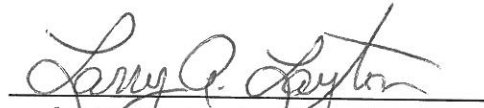
**WHEREAS**, the owner is willing to comply with the attached restrictions as shown in Exhibit B; now

**THEREFORE, BE IT RESOLVED** that the Floodplain Board of Navajo County does hereby grant a variance that a floodplain use permit per the Navajo County Flood Damage Prevention Ordinance Section 4.1 is not required for the landscaping berm shown in Exhibit A.

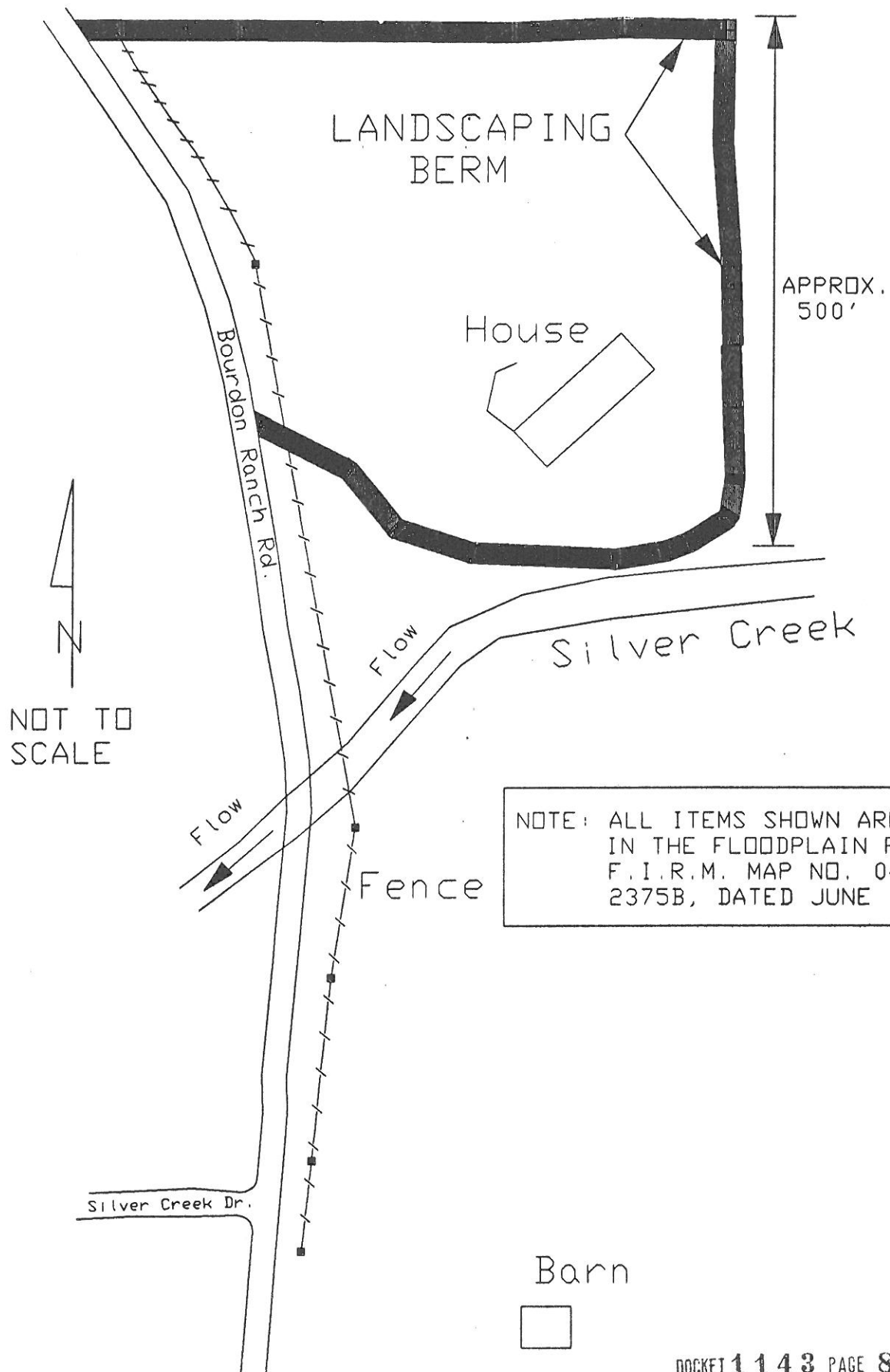
**PASSED AND ADOPTED** this 23<sup>rd</sup> day of August, 1993.

**ATTEST:**

  
Sharon R. Keene-Wright  
Clerk of the Board

  
Larry A. Layton, Chairman  
Board of Supervisors

# EXHIBIT A



NOTE: ALL ITEMS SHOWN ARE  
IN THE FLOODPLAIN PER  
F.I.R.M. MAP NO. 04006-  
2375B, DATED JUNE 1, 1982.

Barn



## RELEASE AND HOLD HARMLESS AGREEMENT

Release executed this 23<sup>RD</sup> day of August, 1993, by Kurt Schurkens and Robynn Schurkens, husband and wife (the "Schurkens"), in favor of Navajo County (the "County").

WHEREAS, the Schurkens are the owners of real property located in Navajo County, Arizona, designated by Assessor's Parcel Number 204-11-036 (the "Property"); and

WHEREAS, the Property is in the floodplain shown on Flood Insurance Rate Map Panel Number 040066-2375B, dated June 1, 1982; and

WHEREAS, the Schurkens' residence located on the Property was damaged by floodwaters during December of 1992, and January and February of 1993; and

WHEREAS, the Schurkens caused to be constructed on their property, and within the floodplain, a landscaping berm; and

WHEREAS, the landscaping berm was constructed without the issuance of a floodplain use permit; and

WHEREAS, the Schurkens have requested that the Navajo County Board of Supervisors, in its capacity as the Floodplain Board of Navajo County, grant a variance allowing the Schurkens' to maintain the landscaping berm on the Property without compliance with the variance requirements of the Navajo County Flood Damage Prevention Ordinance; and

WHEREAS, the Schurkens have been advised of the dangers of living in the floodplain, and have been further advised that the landscaping berm may provide little or no protection against flooding.

NOW THEREFORE, in consideration of the Navajo County Board of Supervisors, in its capacity as the Floodplain Board of Navajo County, granting the variance requested by the Schurkens, pursuant to Resolution Number 68-93, the Schurkens agree to assume the risk of all damage, loss, costs and expenses, and agree to hold harmless Navajo County, the Board of Supervisors and the Floodplain Board, their respective officers, agents, and employees from and against any and all liability, damage, loss, cost and expense, which may accrue to or be sustained by the Schurkens, their heirs or assigns, on account of any claim, suit, or action made or brought against Navajo County, the Board of Supervisors or the Floodplain Board, or their respective officers, agents and employees arising out of the grant of the variance permitting the Schurkens to construct and maintain a landscaping berm on the Property, including but not limited to any flood damage to the Property or residence thereon. The Schurkens further agree that the terms of this Agreement and the Resolution granting the variance for the landscaping berm shall be disclosed to any perspective purchasers. This agreement shall enure to the benefit of the Navajo County Board of Supervisors and the Floodplain Board, both in their individual capacities, and the successors and assigns of the foregoing.

FURTHER, the parties hereto agree that the Resolution permitting the Schurkens to maintain

the landscaping berm shall be recorded with the Navajo County Recorder's Office so as to put prospective and future owners on notice that the Property is in a floodplain, and that the landscaping berm may provide little or no protection in the event of future flooding.

IN WITNESS WHEREOF, Kurt Schurkens and Robynn Schurkens, husband and wife, have executed this release on the day and year first written above.

  
Kurt Schurkens  
Robynn Schurkens

## SETTLEMENT OF CLAIM

Settlement executed this 23<sup>rd</sup> day of August, 1993, by Kurt Schurkens and Robynn Schurkens, husband and wife (the "Schurkens"), in favor of Navajo County (the "County").

WHEREAS, the Schurkens are owners of real property located in Navajo County, Arizona, designated by Assessor's Parcel Number 204-11-036 (the "Property"); and

WHEREAS, the Property is in the floodplain shown on Flood Insurance Rate Map Panel Number 040066-2375B, dated June 1, 1982; and

WHEREAS, Navajo County issued a building permit on or about June 11, 1990, to construct a residence on the Property; and


WHEREAS, the residence constructed on the Property was damaged by floodwaters in December 1992, and in January and February of 1993; and


WHEREAS, the Schurkens filed a claim against Navajo County, pursuant to A.R.S. § 12-836 et seq., on May 3, 1993, for damages to the Property and residence thereon, that resulted from said flooding; and,

WHEREAS, the Schurkens and the County have reached an agreement which resolves the claim filed by the Schurkens against the County.

NOW THEREFORE, in consideration of the Navajo County Board of Supervisors, in its capacity as the Floodplain Board of Navajo County, having granted the Schurkens a variance to place a landscape berm on said property, pursuant to Resolution Number 68-93, and other good and valuable consideration, the Schurkens release and forever discharge the County of and from all manner of action, causes of action, claims, or demands whatsoever in law or in equity which the Schurkens may now have or may hereafter acquire against the County for and on account of, or by reason of which in any manner may have been sustained by Schurkens with respect to the content of the Claim filed against the County on behalf of the Schurkens by their attorney Dan W. Montgomery, Esq., dated April 22, 1993, and pertaining to flood damage to the residence located on the Property.

IN WITNESS WHEREOF, Kurt Schurkens and Robynn Schurkens, husband and wife, have executed this settlement on the day and year first written above.

  
Kurt Schurkens

  
Robynn Schurkens